

REMARKS

REJECTIONS UNDER 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Deutsch (U.S. Patent Number 5,097,828). Applicant respectfully traverses this rejection.

Applicant's invention, as defined in amended claim 1, includes, *inter alia*, a cold sink in direct contact with said thermo-electric module. Support for this amendment is found at least on page 8 of the instant application in paragraphs 17 – 19. Deutsch requires that the thermoelectric module be thermally isolated from the externally exposed cold sink. The Deutsch patent relies on maintaining a space between the cold sink and the cooling means and is essential to the operation of the Deutsch device. Additionally, some means such as a fan is required to conduct heat away from the thermoelectric module unlike the present invention. Claim 1 of the instant application is amended merely to point out and emphasize the distinction between the Deutsch device and the instant invention. It is respectfully proposed that the cold sink of the instant invention must be in contact with the thermoelectric source in order to properly operate and be compact enough for discrete, portable use as discussed in the description.

Further, it appears that Deutsch actually teaches away from the direct contact configuration of the present invention. Deutsch claims and discloses a “means for thermally and electrically isolating said contact plate from said head.” Deutsch reveals in the description that the means to thermally isolate the contact plate from the head is by using a ceramic insulator and utilizes a fan to circulate air. The instant invention relies on direct contact to function in a compact and space saving manner and does not rely on air circulation. The Court in the **Donaldson** decision, stated that examiners shall interpret 35 USC 112, paragraph 6, "means or step plus function" language in a claim as limited to the corresponding structure, materials or acts described in the specification. It is clear from the description that isolating the thermoelectric heater/cooler from the contact pad is critical to its working as well as requiring a means for circulating air. (See Deutsch column 3: lines 2-15.) The instant invention does not utilize air at all and this allows it to be significantly smaller whereby it fits easily in a purse or pocket which is not practical for the Deutsch device.

As such, it is submitted that claim 1, as amended, is patentable over the art of record and is also proposed to be in a condition for allowance.

Reconsideration of the rejection of claims 1 and 2 under 35 U.S.C. § 102 is respectfully requested in light of the amendments and remarks above.

REJECTIONS UNDER 35 U.S.C. § 103

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Deutsch (U.S. Patent Number 5,097,828) in view of Saringer (U.S. Patent Number 5,628,769). Applicant respectfully traverses this rejection.

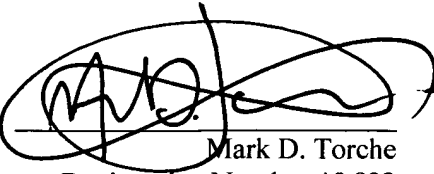
Applicant's invention, as defined in amended claim 1, includes, *inter alia*, a cold sink in direct contact with said thermo-electric module. Saringer, like Deutsch, relies on a means for thermally conducting heat away from the device which is clear from the description refers to either air being circulated with a fan or liquid circulation using an impeller. This renders the device larger than the present invention and does not overcome the prior art limitation of being portable enough to fit within a purse or a pocket. Since both Deutsch and Saringer teach that it is necessary to actively circulate a fluid in order to properly operate, neither Deutsch or Saringer alone or in combination can cure the defect of not requiring active fluid flow and thereby limit the size reduction necessary to overcome the prior art.

Since Saringer lacks the critical information, one skilled in the art and following the teaching of Saringer would be led away from the correct solution to the problem. Since it is respectfully proposed that Saringer lacks a crucial teaching, it cannot be used to render the instant invention as obvious either alone or in combination with Deutsch. Accordingly, it is respectfully submitted that claim 2 is patentable over the combination of Deutsch in view of Saringer.

Claim 2 is dependent from claim 1. Accordingly, it is respectfully submitted that this claim is patentable for the same reasons as claim 1 above, as well as because of the combination of the limitations set forth in this claim with the limitations set forth in amended claim 1 from which it depends.

In view of the foregoing, this application is now believed to be in condition of allowance, which action is respectfully requested.

Respectfully Submitted,



Mark D. Torche
Registration Number 45,823
Patwrite
413 E 13th Street
Ames, IA 50010-5603
Telephone: (866) 424-7529

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on Nov 11, 2005

Date



Signature

Mark David Torche

Typed or printed name of person signing Certificate

45,823

Registration Number, if applicable

(866) 424-7529

Telephone Number